UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,585	02/05/2001	E. Stephen Crandall	105136.01	9273

7590   03/27/2007

MR. S. H. SWORETSKY
AT&T CORP. ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

EXAMINER
SHINGLES, KRISTIE D

ART UNIT	PAPER NUMBER
2141	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	09/775,585	CRANDALL, E. STEPHEN
	Examiner	Art Unit	
	Kristie Shingles	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5-7,9,10,14,16,18-20,22,23 and 27-29* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3, 5-7, 9, 10, 14, 16, 18-20, 22-23 and 27-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response To Amendments
Claims 2, 4, 8, 11-13, 15, 17, 21 and 24-26 have been cancelled.

Claims 1, 3, 5-7, 9, 10, 14, 16, 18-20, 22-23 and 27-29 are pending.

Response To Arguments

I.   Applicant's arguments filed 1/18/2007 have been fully considered but they are not

persuasive.

A.   **Regarding Claims 1, 3, 5-7, 9, 10, 14, 16, 18-20, 22, 23, 27 and 28: Applicant argues
        that there exists no suggestion to combine the cited prior art of record *Frerichs et al*
        (US 6,684,249) in view of *Greer et al* (US 5,978,828) and that the substantial
        differences of *Frerichs et al* and *Greer et al* "teaches away" from their combination.**

        Examiner respectfully disagrees. Firstly, in response to Applicant's arguments

against the references individually, one cannot show nonobviousness by attacking references

individually where the rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375

(Fed. Cir. 1986).

        Secondly, in response to Applicant's argument that the differences of *Frerichs et*

al and *Greer et al* "teaches away" from their combination, the test for obviousness is not whether

the features of a secondary reference may be bodily incorporated into the structure of the primary

reference; nor is it that the claimed invention must be expressly suggested in any one or all of the

references. Rather, the test is what the combined teachings of the references would have

suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871

(CCPA 1981). In this case, *Frerichs et al* teaching of inserting advertisements into streaming audio for transmission over the Internet is not contrary to updating the advertisements. *Frerichs et al* actually teach that the system's software checks for the most recent list of advertisements and for expired advertisements (*col.9 lines 44-54*), which actually indicates that the system updates or replaces the expired advertisements. Thus the combination of *Frerichs et al* and *Greer et al*'s systems suggests to those of ordinary skill in the art that transmitting updated/new advertisements to replace expired/out-of-date advertisement is an obvious feature of *Frerichs et al* improved upon by features of *Greer* that provide update notification of web content, including the updating of advertisements (*Figures 4 and 9, col.3 lines 24-39*). Applicant's arguments are therefore unpersuasive and the rejections under the prior art are maintained.

B.   **Regarding Claim 29: Applicant argues that the teachings of the cited prior art of record, *Callahan et al* (US 6,665,688) in view of *Sitrick* (US 6,425,825), are in "completely different international classes and completely different context" and thus there is no motivation to combine.**

Examiner respectfully disagrees. Firstly, in response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Secondly, in response to applicant's argument that *Sitrick* (US 6,425,825), is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed

invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, *Sitrick* is relied upon for teaching the claimed limitation of "generating the pseudo-live performance by mixing information corresponding to one or more portions of the needed performance information with other information, wherein: the generating of the pseudo-live performance further comprises: synthesizing a voice having selected voice characteristics". Relying on a single implementation of *Sitrick*'s system, such as the amusement park game embodiment, is insufficient in judging the relevancy of the reference's teachings and does not preclude the teaching's fulfillment of the claimed limitations. *Sitrick* teaches generating pseudo-live data comprising mixing the pseudo-live data and voice-synthesis along with selected voice parameters (*Abstract, col.2 lines 47-62, col.3 lines 4-65, col.7 lines 45-53, col.21 lines 24-49, col.24 lines 8-16, col.25 lines 19-24*) used for audiovisual presentations including teleconferencing, security and virtual reality systems (*col.31 lines 9-17, col.35 lines 23-31*). Thus updating audiovisual data in the system presented by *Sitrick* is not out of context with *Callahan, II et al*'s system for monitoring the generation of input data and updating the data set when the data has changed (*Abstract*). Applicant's arguments are therefore unpersuasive and the rejection under the prior art is maintained.

Claim Rejections - 35 USC § 103

II.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

III.   **Claims 1, 3, 5-7, 9, 10, 14, 16, 18-20, 22, 23, 27 and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable by *Frerichs et al* (US 6,684,249) in view of *Greer et al* (US 5,978,828).

a.   **Per claims 1 and 14** (differ only by statutory class), *Frerichs et al* teach the method for receiving performance information over a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the performance information (*col.2 lines 31-37, col.3 line 66-col.4 line 57, col.6 lines 18-66, col.7 lines 1-45, col.10 lines 60-65, col.11 lines 37-42, col.13 lines 48-64 and col.15 lines 40-6; provision for accessing user profiles, detecting and storing user activity and requests*);

- selecting a process for obtaining the needed performance information (*col.6 lines 62-col.7 line 25, col.8 lines 30-40, col.9 lines 39-54 and col.13 line 33-col.14 line 52*);

- executing the process for obtaining the needed performance information (*col.9 lines 39-54, col.13 line 33-col.14 line 52 and col.9 lines 12-26*); and

- generating the pseudo-live performance by mixing information corresponding to one or more portions of the needed performance information with other information (*col.4 lines 44-56, col.7 lines 35-58, col.8 line 64-col.9 line 11, col.9 lines 27-38 and col.10 line 48-col.12 line 39*).

Yet *Frerichs et al* fail to explicitly teach determining that stored program information is out-of-date further comprises: transmitting a query to determine a time of a latest update of the stored performance information, receiving the time of latest update of the stored performance information in response to the transmitting of the query, accessing a time-stamp of the stored performance information, and determining whether the time-stamp of the stored performance information matches the time of the latest update of the stored performance information. However *Greer et al* teach querying to receive update information to determine a

time of the last update/modification, accessing the timestamp of the webpage object and determining if the stored object has been updated (*col.3 line 64-col.4 line 31, col.5 line 22-col.6 line 25, col.7 lines 35-45, col.8 lines 23-52, col.9 lines 1-10*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Frerichs et al* with *Greer et al* for the purpose of determining that stored data is old or out-of-date by comparing latest update times and time-stamps. Time-stamping and maintaining the date and time of data modifications are common techniques used in the art for effectively implementing updates, synchronizing data and keeping track of the current version of stored data in order to keep the stored data up-to-date.

b.   **Per claim 3**, *Frerichs et al* and *Greer et al* teach the method of claim 1, *Frerichs et al* further teach the method further comprising: accessing a profile wherein the profile indicates one or more of: a type of information desired by an end-user; a schedule of an end-user; and scheduled times at which information is transmitted by the performance transmitter (*col.2 lines 21-37, col.8 lines 41-63, col.9 lines 39-54, col.14 lines 40-52 and col.15 line 40-col.16 line 23*).

c.   **Claim 16** is substantially similar to claim 3 and is therefore rejected under the same basis.

d.   **Per claim 5**, *Frerichs et al* and *Greer et al* teach the method of claim 1, *Frerichs et al* further teach the method further comprising determining whether a performance transmitter is of a type that is capable of receiving and responding to an information request, wherein the determining further comprises one or more of: transmitting a query signal to the performance transmitter; passively receiving a signal from the performance transmitter; and accessing a profile (*col.10 lines 24-53 and col.11 line 25-col.12 line 17*).

e.   **Claim 18** is substantially similar to claim 5 and is therefore rejected under the same basis.

f.   **Per claim 6**, *Frerichs et al* and *Greer et al* teach the method of claim 1, *Frerichs et al* further teach the method further comprising: generating an information request; and transmitting the request to the performance transmitter via the network (*col.3 line 66-col.4 line 43, col.10 lines 24-53 and col.11 line 25-col.12 line 17; Greer et al: col.8 lines 30-52, col.9 lines 1-10*).

g.   **Claim 19** is substantially similar to claim 6 and is therefore rejected under the same basis.

h.   **Per claim 7**, *Frerichs et al* and *Greer et al* teach the method of claim 1, *Frerichs et al* further teach wherein the selecting a process comprises determining an appropriate time to receive information from the performance transmitter (*col.6 line 62-col.7 line 66, col.8 lines 41-63, col.13 line 48-col.14 line 39 and col.16 lines 10-30*).

i.   **Claim 20** is substantially similar to claim 7 and is therefore rejected under the same basis.

j.   **Per claim 9**, *Frerichs et al* and *Greer et al* method of claim 1, *Frerichs et al* further teach wherein generating the pseudo-live performance comprises: retrieving the other information; decoding one or more commands of the other information; and performing one or more tasks instructed by the commands (*col.3 line 66-col.4 line 56, col.6 lines 3-51, col.7 line 6-col.8 line 67, col.9 line 12-col.10 line 65 and col.15 line 40-col.16 line 41*).

k.   **Claim 22** is substantially similar to claim 9 and is therefore rejected under the same basis.

l.   **Per claim 10**, *Frerichs et al* method of claim 9, wherein the one or more

commands includes one or more of programming commands that execute a software program,

housekeeping commands that load, delete, change or overlay stored information, and

performance commands that reproduce stored information from one or more specified locations

of a storage device (*col.3 line 66-col.4 line 56, col.6 lines 20-51, col.7 lines 6-64, col.9 line 2-

col.10 line 65, col.11 lines 22-65 and col.13 lines 48-64*).

m.   **Claim 23** is substantially similar to claim 10 and is therefore rejected under the

same basis.

n.   **Per claim 27**, *Frerichs et al* and *Greer et al* teach the method of claim 1, *Greer et

al* further teach wherein the performance information includes multimedia performance

information (*col.3 lines 26-39*).

o.   **Claim 28** is substantially similar to claim 27 and is therefore rejected under the

same basis.

**IV.   Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable by *Callahan et al*
(US 6,665,688) in view of *Sitrick* (US 6,425,825).**

Per claim 29, *Callahan et al* teach a method for receiving performance information over

a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the performance information by determining that stored
  performance information is out-of-date (*Abstract, col.4 line 55-col.5 line 41, col.8
  lines 24-36; provisions for determining out-of-date objects*);

- selecting a process for obtaining the need performance information (*col.5 lines
  20-47, col.7 lines 12-30*);

- executing the process for obtaining the needed performance information (*col.5
  line 49-col.6 line 54, col.8 lines 36-57*); and

Yet *Callahan et al* fail to explicitly teach generating the pseudo-live performance

by mixing information corresponding to one or more portions of the needed performance

information with other information, wherein: the generating of the pseudo-live performance

further comprises: synthesizing a voice having selected voice characteristics. However, *Sitrick*

teaches generating pseudo-live data comprising mixing the pseudo-live data and voice-synthesis

along with selected voice parameters (*Abstract, col.2 lines 47-62, col.3 lines 4-65, col.7 lines 45-*

53, col.21 lines 24-49, col.24 lines 8-16, col.25 lines 19-24). .

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine the teachings of *Callahan et al* with *Sitrick* for the purpose of

providing updates for the pseudo-live performance data while integrating the pseudo-live

performance data with other data and implementing voice synthesis, because this allows for

stored performance data to be updated with changes and modifications, while permitting the

performance data to be mixed with audio, video, and voice data to enhance the performance.

CONCLUSION

V.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure: Baumeister et al (2001/0034786), Reiner (6,219,676), Guturu et al (6,581,075), North

et al (6,055,619), Shelton et al (5,848,378), Parnian et al (6,538,623), Abecassis (6,192,340).

VI.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action

is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply

is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

VII. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kristie Shingles
Examiner
Art Unit 2141

kds

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER